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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------------|
| 10/773,017 | 02/05/2004 | Joseph Z. Lu | I20 06798US | 5322 |
| 128 7590 02/21/2007 HONEYWELL INTERNATIONAL INC. 101 COLUMBIA ROAD P O BOX 2245 MORRISTOWN, NJ 07962-2245 | | | EXAMINER LO, SUZANNE | |
| | | | ART UNIT 2128 | PAPER NUMBER |
| | | | MAIL DATE 02/21/2007 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/773,017

Applicant(s)

LU, JOSEPH Z.

Examiner

Suzanne Lo

Art Unit

2128

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-27.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

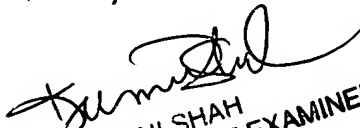
8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: First, the proposed amendment changes the scope of the claims and requires further search and consideration. Wherein the claims were originally directed towards a matrix comprising a second column Hankel matrix forming in a first portion of the matrix, the claims are now directed towards a matrix comprising a second column Hankel matrix comprising the second plurality of samples in a second portion of the matrix.

Additionally, Applicant's arguments that claims 1-27 are not 101 deficient is unpersuasive: To begin, the MPEP 2106, in regards to judicial exceptions, require that a claimed invention can be directed towards a practical application of a judicial exception and therefore statutory subject matter by producing a useful, tangible, and concrete result, not the other way around. The Applicant's argument that a claim having a possible "practical application", which is not within the claim language, necessitates a tangible result and thereby fulfills the practical application requirement of statutory subject matter employs circular reasoning and does not satisfy the 101 requirements for statutory subject matter. Second, using a matrix or projection to perform some function does not produce a tangible result; while they may produce a result, it is not necessarily tangible. It appears that a partially isolated signal is meant to be the final result of the method claims but there is no indication whatsoever that the isolated signal is outputted in anyway shape or form. Claims 1 and 27 have the above noted deficiencies and while they are not software per se, they are still directed towards non-statutory subject matter. Claims 11, 18, 21 are directed to "memory operable to store..." and "one processor operable to..." (claim 11) and "a computer program embodies on a computer readable medium....the computer program comprising computer readable program code for...." are directed towards software per se as the claims program code does not execute or perform any actions. Additionally, the limitations of memory and processor "operable to store or perform" are directed to intended use and claims 11 is fully anticipated by any system with a memory and processor. Finally claim 26 with a "monitored system" and a "controller" is directed towards software per se as the monitored system and controller need not be implemented by hardware. In fact, the Specification of the instant applications explicitly states, "the controller could be implemented in any hardware, software, firmware, or combination thereof" in paragraphs [020],[026], and [068] Additionally, the specification of the instant application states in paragraph [017], "in some embodiments, the monitored system is represented by a process model G(s)". All rejections under 35 U.S.C. 101 are maintained.


KAMINI SHAH
SUPERVISORY PATENT EXAMINER